

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) NO: 14-CV-1025 RB-SMV
)
THE CITY OF ALBUQUERQUE,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE
THURSDAY, APRIL 5, 2018
11:17 A.M.
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

(Proceedings recorded by machine shorthand and
transcript produced by Computer-Aided Transcription.)

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8 and

9 U.S. DEPARTMENT OF JUSTICE
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12 Washington, D.C. 20004
13 BY: COREY M. SANDERS, ESQ.

14 and

15 U.S. DEPARTMENT OF JUSTICE
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18 BY: PAUL KILLEBREW, ESQ.

19 FOR THE CITY OF ALBUQUERQUE:

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24

25

1 TELEPHONIC APPEARANCES continued:

2 Also Present:

3 DR. JAMES D. GINGER
4 Court-appointed Independent Monitor

5 CHIEF MICHAEL GEIER
6 COMMANDER JOHN SULLIVAN
7 DEPUTY CHIEF ROGER BAÑEZ
8 DEPUTY CHIEF HAROLD MEDINA
9 DEPUTY CHIEF ART GONZALEZ
10 LIEUTENANT CORI LOWE
11 SHANIA GALLEGOS
12 Albuquerque Police Department

13 HONORABLE LORENZO F. GARCIA, RET.

14 EDWARD HARNESS, Executive Director CPOA

15 ALYSSA FERDA, Clerk U.S. Attorney's Office

16 DIONNA K. FORD, Law clerk

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1 (On the record at 11:17 A.M.)

2 THE COURT: Good morning, everyone. This is the
3 April 2018 status conference in *United States of America*
4 *versus City of Albuquerque*. I'm here. Jess is here.

5 Dionna, are you on?

6 LAW CLERK: I am, Your Honor.

7 THE COURT: Good. Good.

8 So who do we have, please, on behalf of the City?
9 Let's begin there.

10 MR. AGUILAR: Your Honor, this is Esteban Aguilar
11 on behalf of the City, along with Jeramy Schmehl and Melissa
12 Kountz. I'll ask each of the City representatives to
13 introduce themselves. But we're having a little difficulty
14 hearing you, so I don't know if it's our phone, but we can
15 hear the other parties fairly well, so just to alert the
16 Court.

17 Go ahead.

18 DEPUTY CHIEF MEDINA: Deputy Chief Harold Medina,
19 Albuquerque Police Department.

20 DEPUTY CHIEF BANEZ: Deputy Chief Roger Bañez,
21 Albuquerque Police Department.

22 LT. LOWE: Lt. Cori Lowe, Albuquerque Police
23 Department.

24 FEMALE SPEAKER: (Inaudible.)

25 MALE SPEAKER: (Inaudible.)

1 (Reporter interruption for clarification.)

2 THE COURT: Hang on just a moment, please --

3 DEPUTY CHIEF GONZALEZ: Art Gonzalez --

4 THE COURT: -- we didn't hear the last of the
5 folks from the City police department.

6 LT. LOWE: Cori Lowe, lieutenant, APD.

7 FEMALE SPEAKER: (Inaudible), APD.

8 DEPUTY CHIEF GONZALEZ: Art Gonzalez, Deputy
9 Chief APD.

10 MR. LEWIS: James Lewis, APD.

11 CDR. SULLIVAN: John Sullivan, Training Director,
12 APD.

13 CHIEF GEIER: Mike Geier, Chief, APD.

14 JUDGE GARCIA: If it please the Court, this is
15 Lorenzo F. Garcia. I am neither a party nor counsel for
16 either, rather I am a nonlegal representative for the City
17 Council.

18 THE COURT: Folks, sorry. There was a female
19 that said she was appearing right after Cori Lowe, and we
20 didn't get that name.

21 FEMALE SPEAKER: (Inaudible.)

22 THE COURT: And I'm sorry, we still don't have
23 it. Could you spell the name for us, please?

24 MS. GALLEGOS: S-H-A-N-I-A. Gallegos,
25 G-A-L-L-E-G-O-S.

1 THE COURT: Perfect. Thank you.

2 MS. GALLEGOS: Welcome.

3 THE COURT: And from the Police Officers
4 Association?

5 MR. MOWRER: May it please the Court, Frederick
6 Mowrer on behalf of the Albuquerque Police Officers
7 Association.

8 THE COURT: Thank you.

9 Dr. Ginger, are you with us?

10 DR. GINGER: I am, Your Honor.

11 THE COURT: And from the U.S. Attorney's Office?

12 MS. MARTINEZ: Elizabeth Martinez, Your Honor.
13 And with me is our assistant, Alyssa Ferda, F-E-R-D-A.

14 THE COURT: Thank you. Mr. Killebrew is not with
15 you?

16 MS. MARTINEZ: He's on the line, and one of our
17 colleagues is as well.

18 Paul?

19 MR. KILLEBREW: Yes, I'm on the line, Your Honor.
20 Thank you.

21 THE COURT: Anyone else that hasn't been
22 identified?

23 MR. SANDERS: Yes, Your Honor. Corey Sanders
24 from the Department of Justice.

25 MR. HARNESS: Edward Harness from the Civilian

1 Police Oversight Agency.

2 THE COURT: Thank you, Mr. Harness.

3 Anyone else?

4 If not, folks, we've got a -- and I'd call it an
5 ambitious agenda proposed this morning, so let's get right
6 to it.

7 The first matter is a report on technical
8 assistance provided by or provided to APD.

9 Dr. Ginger?

10 DR. GINGER: Thank you, Your Honor.

11 As the Court is probably aware, we've spent the
12 first four months of the new tenure of the new
13 administration sort of working out a way forward in response
14 to that plan that I had devised back in November, I guess,
15 of last year. We actually initialized that last month with
16 a site visit to Albuquerque by, over a period of time, all
17 of our team members. We weren't all able to get there at
18 once. And it's probably better that way because we were
19 able to focus basically on a topic at a time with APD
20 instead of having them torn between seven or eight different
21 topics and seven or eight different people at one time. So
22 I think that turned out to be a fairly decent kickoff to
23 this new phase.

24 We have provided some very specific technical
25 assistance and will be continuing that for the next -- for

1 this month, as well. We have more team members that will be
2 up there. And all of us are providing specific actionable
3 technical assistance to APD on a way forward, trying to
4 build skills that they may need, trying to assess what their
5 needs are under this new process, and make sure that they
6 have a clear understanding of what our expectations are.

7 We've done some fairly basic stuff that we had
8 tried to do before with APD. We reintroduced the concept of
9 a sequential planning process and gave APD some examples of
10 different planning modalities that we think they might be --
11 might be useful to them in the future. We debriefed each
12 member of the senior staff on the way forward plan; not only
13 did we tell them what we had in mind, but we got input back
14 from them about what they might need under that process.

15 We identified several critical path issues for
16 APD and talked about past failures and what we might be able
17 to do to make sure that those failures don't reoccur. And I
18 think everybody has a good understanding of what the new way
19 forward is and what the critical path is on that new way
20 forward.

21 We provided some very specific problem-solving
22 modalities for the use-of-force backlogs for APD to
23 consider. And I think that was well received. Everybody
24 seems to be on the same page and we're all trying to move
25 the boat in the same direction, which as the Court knows, is

1 new for us. And I want to express my thanks to folks at APD
2 and the City for this new attitude and this new receptivity
3 that we've seen in the past few weeks and months.

4 THE COURT: Thank you, Dr. Ginger.

5 Chief Geier, how is this technical assistance
6 going? How do you see it benefiting the City? There's a
7 tradeoff, we all understand that, to the extent that the
8 monitor is providing that assistance, there -- the team is
9 not doing the classic monitoring role, so how do you see
10 this playing out? Is it something that's -- you see as
11 beneficial?

12 CHEIF GEIER: Yes. Obviously, we're in the early
13 stages. And I mean, it's starting off, it's kind of broad,
14 you know, assistance in that regard, but we see some
15 specific areas that they've pointed out and offered that
16 assistance to us from the onset in the last visit. I think
17 it's a good starting point for us right now because it gives
18 us that more specific guidance of which direction we need to
19 go.

20 I think sometimes, when you start with a very
21 wide framework, it leads to confusion and people kind of
22 take that on their own initiative to interpret what it is on
23 their level when, in reality, now we're getting again, that
24 specific guidance that will put us in that direction. And I
25 think that will expedite the entire process as a result. So

1 we're grateful for at least starting the implementation at
2 this stage. And we're looking forward to hopefully
3 continuing and building from that.

4 THE COURT: Thank you. Does anyone else want to
5 be heard on the technical assistance being provided?

6 Let's look to Item 2, then, on the agenda, Update
7 on the implementation on the City's compliance plan.

8 Mr. Schmehl?

9 MR. SCHMEHL: Yes, Your Honor. Thank you. I'll
10 pretty quickly pass the mic to Lt. Cori Lowe, who will
11 provide the Court with an update on the progress in
12 implementing the compliance plan. Thank you, Your Honor.

13 LT. LOWE: Good morning, Your Honor. Lt. Lowe
14 with APD. I just wanted to give a real quick update on the
15 current compliance plan. As we're working through it, we
16 have started to learn that this is a very helpful tool in
17 trying to get us in the right direction that we're trying to
18 go, as well as get deadlines to abide by, but we're also
19 learning. A couple of things that you will see in the next
20 few sections kind of describe that.

21 Area 1 is use of force. That remains to be the
22 priority for APD. And those deadlines should be met with
23 what they're doing on a daily basis, if we don't get that
24 done quite a bit earlier than the deadlines that we
25 previously set.

1 For Area Number 2, the deadlines have been met,
2 for the most part. And there has been a file-saving
3 mechanism put in place, so we can show proof of task
4 completion. And just for a second, I'm going to give it
5 back to Assistant City Attorney Jeramy Schmehl, so he can
6 explain the policy development process.

7 MR. SCHMEHL: Yes, Your Honor. And I think we
8 actually may be knocking out two birds with one stone here
9 because this is going to be mentioned as Agenda Item
10 Number 7; specifically, SOP 352, which discusses the policy
11 development process.

12 As Your Honor may remember, we had a series of
13 meetings. We had, actually, a discussion at the full Police
14 Oversight Board meeting where it was presented as a process
15 flow, and we actually -- and again, we met with the policy
16 review subcommittee for the Police Oversight Board. And all
17 that discussion culminated in a meeting with the amici, and
18 that included the Police Oversight Board.

19 Internally, we had discussions -- and when I say
20 "internally," I refer to the parties and the monitor --
21 about how to go forward with getting that 352 finally, you
22 know, approved and reviewed by everyone. We anticipated
23 that that would be the way to do it, to get that
24 conversation going with the POB and the amici. And then
25 there would be a draft provided to the parties and the

1 monitor, and then there would be approval. However, having
2 taken a step back, it's been determined that it should go to
3 the full Police Oversight Board on the 12th of this month
4 for them to talk about it in public formally. We're
5 anticipating comments back from the monitor and parties on
6 April the 9th. So there may be -- and as it relates to
7 the compliance plan, there may be a slight delay in that
8 one. That was anticipated to be completed by the April the
9 14th; however, we wanted to make sure that it was -- you
10 know, it was thoroughly discussed and that no one was cut
11 out, specifically the Police Oversight Board was not cut out
12 from that end process because that's the goal moving forward
13 to make sure that they have a role in that conversation at
14 the end of the formal adoption [sic] of a policy.

15 And now, Your Honor, Cdr. John Sullivan will
16 speak to training issues that are implicated by the
17 compliance plan.

18 THE COURT: Thank you. Cdr. Sullivan?

19 CDR. SULLIVAN: Good morning, Your Honor.
20 Cdr. Sullivan with APD. Two items on training on the
21 compliance plan that have not yet been met. One of them was
22 the submission of our comprehensive seven-step program.
23 That actually was submitted to the parties and Dr. Ginger
24 this morning. So I apologize to the Court. It's a couple
25 days late, but I was waiting to get a completed staff book

1 that I had created reference to the testing process
2 included. So that's done. I anticipate that approval
3 process to take a few days, and we should be up and running
4 with that.

5 The second item pending before the Court, as far
6 as the compliance plan and training, is an analysis of a
7 survey of the modified Citizens Police Academy. We had been
8 waiting on that in hopes to get all of these surveys back
9 from the attendees of the modified Citizens Police Academy.
10 We have not received all of those surveys; however, we're
11 just going to go forward and do an analysis on what we have
12 received thus far. I feel like we've had enough time out
13 there in hopes of getting the surveys back. At this point,
14 we probably won't receive any further surveys. So we should
15 have that analysis completed and submitted to the parties by
16 the beginning of next week.

17 MS. MARTINEZ: Your Honor, Elizabeth Martinez.
18 If I may be heard on that?

19 I do want to also let the Court know that, on
20 March 16th, Cdr. Sullivan had a meeting with members of
21 the POB to elicit their feedback on the condensed Citizen
22 Police Academy. So in addition to the survey, he also did
23 meet with Mr. Harness and members of the POB. And I am
24 aware that, on Saturday, when the CPC members are having a
25 training session, he is also planning to meet with members

1 of the CPCs to elicit their feedback and get their input on
2 the new condensed Citizens Police Academy. So he is going
3 beyond simply just the survey and actually meeting with both
4 POB and CPC members to get one-on-one input and feedback.
5 And I wanted the Court to be aware of that additional step
6 that he is taking.

7 THE COURT: Well, thank you, Ms. Martinez.

8 And thank you, Cdr. Sullivan, for your commitment
9 to involving the -- well, the policing councils of the
10 oversight board in this compliance plan process. That's
11 critical in terms of public trust. And that's been the
12 source of some -- some angst, as you know, in the past,
13 so -- a failure to abide or a failure to include those
14 public voices.

15 Anyone else on the compliance plan?

16 LT. LOWE: Your Honor, just to finish up, this is
17 Lt. Lowe for Areas 4, 5, and 6. We are meeting our
18 deadlines with one exception, which is for the force review
19 board, but again, that's just waiting for the policy
20 development process. Once that's in place, we will be able
21 to meet all our deadline from here on out.

22 And that would be it for Lt. Lowe on the
23 compliance plan, if there's not any other questions.

24 THE COURT: Thank you.

25 I like hearing deadlines are being met and we're

1 moving -- moving forward.

2 So Number 3, the parties were inquiring about
3 potential court action on the joint stipulation modifying
4 the CASA use-of-force provision and the joint stipulation
5 suspending CASA Paragraph 308.

6 Mr. Killebrew?

7 MR. KILLEBREW: Thank you, Your Honor.

8 Paragraph 308 or 338 is the one that governs stipulations
9 and modifications. And as I'm sure the Court remembers, the
10 paragraph says that modifications, that the parties are to
11 inform the Court and that they go into effect 45 days after
12 submission to the Court, unless the Court orders otherwise.

13 And so the parties have submitted the
14 modification suspension on March 5th. And in the past,
15 the Court has, at times, issued orders when the parties have
16 submitted a stipulation modifying some aspect of the CASA,
17 so we weren't sure if the Court had intended to issue orders
18 with regard to this modification.

19 The other -- the other filing that we made was a
20 suspension of the CASA -- of a CASA requirement relating to
21 the timing of monitoring reports. There's nothing in
22 Paragraph 338 that talks about submitting those to the Court
23 or the Court needing to rule on them, but we thought it
24 best, in light of how the Court has handled modifications in
25 the past, to go ahead and provide a filing for the Court and

1 follow the same format as the modification pleadings.

2 So essentially, I guess what we're asking is
3 should we expect orders from the Court on those pleadings
4 or -- or not?

5 THE COURT: Well, I had this conversation with my
6 clerk yesterday. I think it best or better practice to have
7 orders following up those stipulations. And if the parties
8 can agree about a form of order, please submit it to me. I
9 just -- I like that process better. So submit forms of
10 order to me and I'll get them filed.

11 MR. KILLEBREW: Thank you, Your Honor. We will
12 do that right away.

13 THE COURT: Thank you.

14 Ready to go to Number 4, then? Factors to be
15 considered in determining filing date for the next CASA,
16 paragraph 298, outcome assessment report.

17 Ms. Martinez?

18 MS. MARTINEZ: Yes, Your Honor. Before the
19 March 15th status conference, the Court's clerk contacted
20 the parties and the monitor and asked us to articulate the
21 impact that the joint stipulation suspending the regular
22 reporting would have on the 298 outcomes assessment report.
23 And specifically, she asked us to let us know how that would
24 impact the filing date for the next outcomes assessment
25 report.

1 Ms. Ford let us know that based on the Court's
2 calendaring, the Court anticipated that the next outcomes
3 assessment report would be due for filing on May 14th,
4 2018. At the time, we requested that the Court let the
5 parties and monitor report at this conference because we
6 needed time to review matters and confer on this issue. And
7 we appreciate that the Court did give us that latitude. And
8 we don't have a recommendation for this Court at this time,
9 but we would like to discuss with the Court factors that we
10 would like the Court to consider.

11 First, we would like the Court to consider that
12 the monitor's first outcomes assessment report was not filed
13 until August 1st, 2017. And that's Document 292. And
14 that report was filed, as the Court knows, late because the
15 problems that the monitor encountered with making sure that
16 he had appropriate data to work with and the difficulties
17 that the monitor encountered in being able to validate the
18 data.

19 Second, the CASA contemplates that the 298
20 outcomes assessment be filed annually. So the parties and
21 the monitor believe that the next report would be filed no
22 earlier than August 1st, 2018. Even if we had not filed
23 Document 355, which of course, has now suspended the regular
24 reporting structure.

25 There are considerations that we believe will

1 require -- or we will be recommending that the report be
2 filed later than August 1st, 2018. One of those concerns
3 is that the compliance bureau and Dr. Ginger are still
4 working to ensure that the 298 outcomes assessment data
5 warehouse is being populated with the correct data and that
6 the data is able to be validated. APD has secured the
7 services of Dr. Peter Winograd to validate the data.

8 And I believe that the Court is familiar with
9 Dr. Winograd. He is a professor who is under contract with
10 APD. He has been working with the Crisis Intervention Unit,
11 and the Court knows how well that division has been doing.
12 And we understand that is working very well with the IT
13 staff at APD in reviewing materials. And I believe that
14 Dr. Ginger will be able to speak to the work that is going
15 on with the data warehouse, because he met by phone with
16 Lt. Lowe and Dr. Winograd earlier this week.

17 So the work, in terms of making sure that the
18 appropriate data is being collected, is ongoing. And the
19 work with making sure that the data is being able to be
20 validated is ongoing.

21 Second, we need to make sure that all of the data
22 that meets the CASA's needs is being collected. Several
23 paragraphs of the data -- of the CASA, rather, require that
24 APD collect demographic data. And the demographic data that
25 needs to be collected is defined in the definition section

1 at paragraph 12-2 of the CASA. As this Court has heard at
2 the community coalition at least twice, first in November
3 and then in March, members of the community want to make
4 sure that the 298 outcomes assessment report includes
5 reporting on the demographic data that the CASA requires
6 collection of. And the parties and the monitor believe it's
7 important that when the next report, the next outcomes
8 assessment report, comes out that it includes that
9 information. So we do want to make sure that that
10 information is in there. We want to make sure that this
11 particular group of amici's interests are responded to.

12 Another factor that we believe is important is
13 that we believe that the next monitoring report, IMR-8,
14 should be released before the next outcomes assessment
15 report. IMR-8 is due for filing in November of 2018. As
16 the Court knows, a regular monitoring report provides a
17 tremendous amount of context. And an outcomes assessment
18 report is really just data-driven. And the parties and the
19 monitor believe it's really important that the community
20 have that context before they get a report that is really
21 just a statistical report.

22 So we're going to ask that Court consider those
23 factors in determining when the next outcomes assessment
24 report should be filed. We are not in a position at this
25 point to recommend a date for the filing of the next

1 outcomes assessment report. We'd like to ask the Court to
2 let us update the Court at the next status conference when
3 we have more information on the status of the 298 outcomes
4 assessment data warehouse.

5 And with that, Judge, unless you have questions
6 for me, I'd like to have Dr. Ginger update the Court on his
7 discussions with Lt. Lowe and Dr. Winograd.

8 THE COURT: Dr. Ginger?

9 DR. GINGER: Thank you, Your Honor. I'm sure the
10 Court's aware that the first 298 reports that we issued had,
11 I guess, to put it mildly, ample and specific
12 recommendations for improving the 298 reporting process. As
13 the Court recalls, we found instance after instance after
14 instance of inaccurate, incomplete, and/or unreliable data.
15 And we made specific recommendations to APD to correct those
16 issues.

17 Unfortunately, the previous administration,
18 previous to the current chief of the police and his team,
19 apparently did absolutely nothing with those
20 recommendations. They sat from the time of the report came
21 out in August until December, I guess, when a new
22 administration came in without -- to my knowledge, without
23 any tangible changes to the data collection and reporting
24 processes. So it leaves the current administration at APD
25 in a real bind. They have a report that is due this August,

1 but they have this -- they have basically the same reporting
2 systems that gave rise to all of the issues that we
3 articulated in the first 298 report. So that puts Chief
4 Geier and his folks in an almost untenable position of
5 trying to produce data that had no underlying systems to
6 produce it. That's the problem.

7 The good news is they recognize what the problem
8 is and they have taken specific measurable and articulable
9 steps to repair those problems. And Ms. Martinez mentioned
10 a contract with Dr. Winograd. I had a very long and very
11 productive conversation with him earlier this week. He
12 understands the goals of that paragraph. He understands
13 what the 298 reporting systems should be doing. He's
14 already identified, as the monitoring team had, some very
15 specific and tangible issues with the current process. But
16 unfortunately, even though we alerted APD to that in August,
17 you know, we're just now starting to get to the point where
18 we can address those issues.

19 So if we were to do another 298 report when it's
20 due, we would simply report basically the same things that
21 we reported in the last one: That the data collection, the
22 data integrity and the data analysis systems are poor, to
23 say the best. And that, I think, will be with
24 Dr. Winograd's guidance and with Lt. Lowe's diligent work
25 that will improve markedly over the coming months. I think

1 they understand this is a burning issue and it's not
2 something that we can let linger too long. So they're
3 motivated to get data collection and analysis changes
4 implemented and executed.

5 I think that's the good news.

6 THE COURT: Mr. Schmehl, did you want to be heard
7 on this issue?

8 MR. SCHMEHL: Your Honor, I would just briefly
9 add because I think Dr. Ginger and Ms. Martinez have done a
10 good job of capturing most, if not all the issues, the City
11 supports the movement of the 298 outcomes assessment report
12 because it will allow -- allow consideration of the issues
13 that Dr. Ginger has raised while also taking into the
14 consideration the fact that, you know, the joint stipulation
15 has changed the reporting out in this reform effort. It
16 makes sense for the 298 outcomes assessment report to take
17 that into consideration as well.

18 The City certainly wants a report that leads to
19 credibility and also reflects work being done under this new
20 time frame.

21 THE COURT: Thank you.

22 Mr. Mowrer?

23 MR. MOWRER: Mowrer: No, sir, I don't need to be
24 heard. I agree with the proposal to extend the deadline.

25 THE COURT: Okay. So folks, I understand the

1 request. I've heard what you've said, but I have an
2 overarching concern: We all talked about a new approach, a
3 new attitude from the City with the change of
4 administrations, and there was a great spirit of cooperation
5 and just a completely positive change in terms of direction
6 as of March. But that honeymoon is not going to last very
7 long. And we're already hearing from the public that the
8 process isn't going anywhere and we're -- a lot of money has
9 been spent and nothing's been accomplished. And you've
10 heard those things as well.

11 I -- I think we don't want to take advantage of
12 this honeymoon period and continue to push things out. If I
13 just leave it as Ms. Martinez requested, that the outcome
14 assessment report comes out after the IMR-8 in November,
15 then -- or you don't tell me until next month when we're
16 going to have it, I just worry about the perception that
17 we're taking advantage of the honeymoon and we're not moving
18 things forward.

19 So I'm not going to be -- I'm going to be
20 understanding, I hope, about the issues, but Doctor, rather
21 than pushing the report out because we don't have what we
22 need to report, maybe rather than just another delay, we
23 have it come out in August as it's scheduled, and we say
24 what we can say and acknowledge that we don't have enough
25 new data, enough data under our -- the new regime to make a

1 complete report. But to leave it open-ended at this point
2 until sometime after November, I hesitate to sign off on
3 that.

4 So let me hear from you about my concerns.
5 Dr. Ginger?

6 DR. GINGER: Well, Your Honor, we'll get the
7 report ready when the Court decides it needs to be ready,
8 and we can reflect current status in that report. So if the
9 Court decides it needs to come out in August, it will be out
10 in August. We will report what data we can find and APD can
11 provide to us that appears to be reliable, and then we'll
12 report again the current shortfalls in that existing system
13 and update the Court on what progress has been made in the
14 interim. I mean, that is certainly doable. It's not
15 something that is a heavy lift by any stretch of the
16 imagination.

17 THE COURT: So what about, rather than just
18 pushing the date out to some date uncertain, we have a
19 report in August that does just exactly what you've said
20 just now, with an agreement that rather than those reports
21 coming annually, that we -- six months after the August
22 report, we have a supplement to it that incorporates all of
23 the new data systems and information that those make
24 available to us?

25 DR. GINGER: I only have -- I only have one

1 concern about that, Your Honor, and it's not, as they would
2 say, a terminal concern. It's not going to affect the life
3 of the process. We can report clearly about the data
4 weaknesses and what needs to be done, but we cannot, in that
5 reporting process, based on the current system, give anyone
6 more than just a very general idea of what's going on in the
7 areas affected by paragraph 298. With that caveat, you
8 know, we can certainly produce that report. It would just
9 simply be a written articulation of what we've already
10 worked through with Lt. Lowe and Dr. Winograd about
11 weaknesses and processes for improvement. But that's
12 certainly -- that's certainly doable.

13 THE COURT: Well, give me a big picture,
14 Dr. Ginger. If -- so August is -- today's -- it's April.
15 That's four months from now. And you're already suggesting
16 that a report that comes out in August is still going to
17 suffer from the inadequacies of the prior regime. And if I
18 just understood what you said, six months after that, there
19 are still going to be those problems apparent and we're not
20 going to be able to give people good information. Did I
21 understand you to say that just now?

22 DR. GINGER: Well, it's not probable, I don't
23 think, Your Honor. I think it's possible. And I may not
24 have been clear in that assessment. I think -- there are
25 some easy fixes in the 298 conundrum. And I think Lt. Lowe

1 and Dr. Winograd are moving along the process to identify
2 what those are and then identify areas where we really just
3 have to admit, based on the record-keeping and that sort of
4 process -- those sort of processes, that we don't know what
5 the status is. So it will be a report that identifies
6 things that we know need to be fixed, some things that we're
7 not sure, you know, where the data systems stand or that
8 we've done a preliminary assessment and think that these
9 data assessment systems stand at point "X," but with no
10 reasonable or particular certainty, as they say. But it
11 would give the public a good idea of what the problem is,
12 where it came from, and what we're doing to fix it.

13 THE COURT: Well, I'm discouraged, if I'm hearing
14 you correctly in response to my concern that it's -- I have
15 you report in August and, six months later, which is ten
16 months from now, obviously, and better than a year after the
17 new regime is in place, that we didn't don't have good
18 information and we still don't have the systems in place to
19 provide that information.

20 At some point, I'm telling you, this honeymoon
21 thing is over and people are going to start, and rightfully
22 so, requiring that we have systems in place, that we have
23 information-gathering according to your norms.

24 Boy, I don't like what I think I'm hearing.

25 MR. KILLEBREW: Your Honor, this is Paul

1 Killebrew from the Department of Justice. May I be heard
2 briefly on this?

3 THE COURT: Yes, sir.

4 MR. KILLEBREW: Thank you, Your Honor. I wanted
5 to take a step back about the purpose of the outcome
6 assessment reports. The idea of the outcome assessments is,
7 if you look back at DOJ consent decree initially for the
8 first 10 or 15 years of our practice, we didn't have these
9 things called "outcome assessments." They were a new
10 innovation, a more recent innovation.

11 And the purpose of the outcomes assessments is
12 that, previously, the way we looked at compliance was, you
13 know, we had a number of things we had to change in policy
14 training and so on, and we looked at compliance and had they
15 done, had they instituted the policy, had they changed the
16 training program, et cetera. So that introduced a question
17 because, just because you've done all those things, does
18 that mean that the pattern of practice of constitutional
19 violation has been eliminated. The outcomes assessments
20 were designed to look at that question in a different way.
21 Not just have you changed policies and training, but what is
22 actually happening with policing. And so we looked at a
23 number of different factors that could be examined in terms
24 of numbers and statistics and proportions and said let's
25 look at all of those because that's another way of looking

1 at whether there is compliance with the overall goals of the
2 consent decree.

3 So the purpose of them is to give that sort of
4 context about what compliance looks like. And if you look
5 at the CASA, paragraph 300(c), it says that the first
6 outcome assessment is to occur 24 months after the effective
7 date. So that turns out to be the time at which the parties
8 originally planned or hoped that APD would have reached full
9 compliance and be moving into the sustainment period. So
10 the idea was that if APD had met that goal, we would be
11 looking not only at a track record of compliance with the
12 obligations under the CASA, but we could also look at the
13 outcome assessments and see if making those reforms had led
14 to the changes we all expected in terms of policing on the
15 street.

16 So here we are now and it's not where we thought
17 we would be. We're several years into this, and APD and the
18 City have not reached full compliance. And the outcome
19 assessments are clearly important to understanding what's
20 going on in the City of Albuquerque, but even with IMR-8, I
21 don't think we expect APD to be in full compliance with the
22 CASA. And so an outcome assessment that comes out right
23 now, again, will provide useful information, but it's -- we
24 wouldn't expect it to show full compliance with the overall
25 goals of the CASA at this point.

1 And one other thing about outcome assessments,
2 the way that the CASA is set up is that APD can show
3 compliance by meeting all of the obligations or by showing
4 improvement in the outcome assessments. And the idea there
5 was that we'd set up requirements for reform that we thought
6 would lead to constitutional policing, but we knew that APD
7 may reap constitution policing through other means, so we
8 wanted to reflect that if they showed improvements in the
9 outcome assessments, this would also be a way of proving
10 their compliance with the goals of the CASA.

11 So all of that context said, the DOJ certainly
12 wants to see these data systems get up and running so that
13 we can start seeing what policing looks like on the street.
14 We do feel more flexibility about the timing of the outcome
15 assessment report, given that we're not in a situation where
16 APD has come into full compliance. And that's where outcome
17 assessments are most critical from our perspective.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Killebrew. And I
20 appreciate the context. And certainly you've got a lot of
21 background that I don't have and I'm -- so you've just given
22 me detail that's down in the weeds. And I'm talking about a
23 view from 10,000 feet. I'm talking about the view from, you
24 know, the public that's watching this. And all they know is
25 this process has been in place, we've got requirements under

1 the CASA, the CASA has not been complied with, it's been --
2 now, we're pushing back deadlines, and we can only ride this
3 "past-regime" horse so far. We've got to have progress.

4 And I don't know how it's measured so much. I
5 don't know whether the outcome assessment is the place where
6 you have to make a public showing that we are making
7 progress. I mean that's what those words sound like,
8 "outcome assessment," you know, are we meeting these
9 outcomes? But I just worry that we've only gotten
10 through -- we're not through yet the fourth item on a
11 ten-item agenda today and I haven't heard -- I've heard a
12 lot about, you know, good attitudes and we're moving
13 forward, but I think at some point, we've got to give the
14 public something concrete in terms of the policing in
15 Albuquerque being turned around, attitudes being turned
16 around, and constitutional policing being a reality as
17 opposed to just a goal.

18 So that's my view from 10,000 feet. And I'm glad
19 to have you-all talk about how things look down there on the
20 ground, but as we all know, we're being watched. And we
21 need to be accountable and transparent. So that's my
22 concern about pushing back deadlines yet again. I
23 remember -- and I'm sure it had to do with a process that
24 wasn't healthy -- but we pushed out the outcome assessment
25 the first go 'round time after time.

1 So that's -- I'll...

2 MS. MARTINEZ: Your Honor?

3 THE COURT: Yes?

4 MS. MARTINEZ: May I be heard, please?

5 THE COURT: Yes.

6 MS. MARTINEZ: It's Elizabeth Martinez. I would
7 like to ask the Court to please consider that on
8 August 31st, the monitor and the City will be filing a
9 report, one of the interim reports, so the community will be
10 getting a report right at that point. So it will not be as
11 if the community will not be getting any kind of information
12 between that period. I mean, I do know that, on June 1st,
13 the community will be getting a report on the technical
14 assistance, but they will be getting a more substantive
15 report on August 31st. And perhaps that would be
16 something that would address some of the concerns that the
17 Court is raising now. And a consideration may be that if
18 the monitor is working on an outcomes assessment report,
19 that may also impact the work on the report that is due on
20 August 31st. So I ask that the Court consider that also.
21 Thank you.

22 THE COURT: Yes, ma'am. And I will consider that
23 and I appreciate the additional information.

24 Here's how we're going to leave this:
25 Ms. Martinez earlier asked that at the next status

1 conference in May that you would have a date in mind for the
2 next outcome assessment report. I will allow that. I'll
3 wait for an update. You-all have heard me. You've heard my
4 concerns and my thoughts about how we might go forward. I'm
5 not prepared at this point to say that it won't come out
6 until after IMR-8 in November. And you've heard me, so
7 you-all figure out where we go from here and let me know in
8 May.

9 And I don't -- do we have a date in May? Because
10 I know I'm gone the first Thursday in May, which is when we
11 usually have these, first Thursday of the month.

12 Dionna, do we have a date for our next hearing?

13 LAW CLERK: Judge, we do not. I think Jessica
14 had talked about asking the parties whether May 17th would
15 be available.

16 THE COURT: Everybody have their calendars with
17 you? You can look to see whether May 17th will work for
18 our next status conference.

19 MR. MOWRER: Fred Mowrer on behalf of the APOA.
20 That works for me.

21 MR. KILLEBREW: That date works for the United
22 States, Your Honor.

23 DR. GINGER: And for the monitor, Your Honor.

24 (Discussion off the record.)

25 MR. SCHMEHL: Your Honor, we're polling the room.

1 If you will just give us a brief moment.

2 (Discussion off the record.)

3 That works for the City as well, Your Honor.

4 THE COURT: Let's do it on May 17th. And I
5 need to start a little earlier in the morning. Let's start
6 at about 10:30, will that work?

7 MS. MARTINEZ: Yes, Your Honor.

8 THE COURT: If that's a problem for anyone, let
9 me know and we'll do what we can to accommodate the concern.
10 Let's go to the next item on the agenda, update
11 on the promotional policy.

12 Mr. Sanders.

13 MR. SANDERS: Yes, Your Honor. How you doing?

14 Judge, I've been playing a mediating role in this
15 part of the case in the City and APOA in reaching an accord
16 on trying to finalize a policy. So Judge, I'd let Attorney
17 Kountz give the Court a greater update on where we are with
18 this policy, and I'll let Mr. Mowrer follow up with that.
19 And if you have any followup questions, Your Honor, I'll be
20 more than happy to answer.

21 THE COURT: Thank you.

22 Ms. Kountz?

23 MS. KOUNTZ: Good morning, Your Honor.

24 Mr. Sanders was kind enough to provide us with
25 proposed language. I reviewed it with my client and I'm

1 currently in the process of making some minor revisions to
2 it. I'll be meeting with the Department again next Tuesday
3 and hope to have something to Mr. Sanders and the APOA at
4 the latter part of next week.

5 THE COURT: Thank you.

6 Mr. Mowrer, are you satisfied with how things are
7 moving forward?

8 MR. MOWRER: Well, Your Honor, it's like this
9 entire process. It's a little slow at times and can be
10 aggravating, but I am looking forward to seeing what
11 Mr. Sanders and Ms. Kountz are able to do after our last
12 telephone conference with regard to our concerns on certain
13 portions of this policy. And we'll await a new draft so
14 that the APOA can timely respond and hopefully work forward.

15 THE COURT: Thank you. And it's my hope that for
16 our next status conference that we either have an agreement
17 or our positions are well defined and we know where we need
18 to go from there.

19 The next matter is the joint stipulation
20 reference mediation. Mr. Killebrew?

21 MR. KILLEBREW: Thank you, Your --

22 MS. KOUNTZ: Your Honor?

23 MR. KILLEBREW: Oh.

24 MS. KOUNTZ: This is Melissa Kountz real quick.
25 May I be excused?

1 THE COURT: Yes, ma'am. Thank you for your --

2 MS. KOUNTZ: Thank you.

3 THE COURT: -- participation.

4 MR. KILLEBREW: Your Honor, this is Paul
5 Killebrew for the United States. You may recall we brought
6 up to the Court in the past that the Civilian Police
7 Oversight Agency proposed to the parties that it be
8 permitted to begin a program for referring minor misconduct
9 complaints to mediation, which is like other forms of
10 alternative dispute resolution. It's a way to have a
11 resolution for a civilian complaint that would not go
12 through the normal formal process, but that, nonetheless,
13 another jurisdiction has proven to be both very effective
14 and led to higher customer satisfaction both for civilians
15 and officers.

16 And so basic -- the Civilian Police Oversight
17 Agency did some research on mediation and proposed a program
18 to begin it. The legal in terms of the CASA is that
19 paragraph 184 says that mediation can only be available
20 where the complaint doesn't allege misconduct. As the Court
21 could imagine, I'm sure, very few complaints have -- contain
22 no allegation of misconduct. Most complaints, civilian
23 complaints, allege some form of misconduct. So instituting
24 this mediation program would require a modification of the
25 CASA. The provision in the CASA is there because the

1 parties wanted to have all civilian complaints handled with
2 consistency and formality so that there -- you could be sure
3 that they would all be handled appropriately and could check
4 whether they had been.

5 At this stage, civilian oversight is -- the
6 Civilian Police Oversight Agency has been up and running for
7 several years and has really taken root in Albuquerque in a
8 way that the parties and the public, it seems, have
9 confidence in. So we feel comfortable permitting mediation
10 for minor civilian misconduct complaints. And the parties
11 have been working on a joint stipulation to modify
12 Paragraph 184.

13 I believe what we intend to do is to suspend
14 paragraph 184 for a six-month period so that we can assess
15 how mediation is going. And if it goes well, then we would,
16 at the end of that six-month period, permanently modify the
17 paragraph.

18 We wanted to put this on the agenda today because
19 we hope and intend that the pleading will be filed with the
20 Court before the next status conference. And so while we
21 had a chance to just let you know that it's coming, we
22 wanted to do so.

23 THE COURT: Thank you.

24 Mr. Harness?

25 MR. HARNESS: Yes, Your Honor, as Attorney

1 Killebrew stated, I believe that we have reached an
2 agreement between ourselves, the APOA, APD, and DOJ to make
3 these changes to allow for the agency to operate in
4 compliance with the City ordinance for mediation to be used
5 in order to take care of the minor complaints. And I'm glad
6 to hear that it's going to be submitted prior to the next
7 status conference.

8 THE COURT: Well, Mr. Killebrew -- does anyone
9 else want to be heard on this issue? If not --

10 DR. GINGER: Nothing from the monitor, Your
11 Honor.

12 THE COURT: If not, then Mr. Killebrew, I'll
13 consider signing off on a stipulation that suspends the
14 operation of the critical paragraph for six months, pending
15 your experience with a mediation program.

16 MR. KILLEBREW: Thank you, Your Honor. In light
17 of our discussion earlier, we will submit a proposed order
18 when we file that pleading.

19 THE COURT: Thank you.

20 Number 7, update on status of draft SOP 352,
21 policy development process.

22 Mr. Schmehl?

23 MS. HERNANDEZ: Yes, Your Honor, thank you.

24 Unless Your Honor has questions, I think it was covered in
25 discussion of Agenda Item Number 2.

1 THE COURT: Yes, sir. Any other discussion about
2 Item 7?

3 Thank you.

4 DR. GINGER: Nothing from the monitor, Your
5 Honor.

6 THE COURT: All right. Let's go on to Number 8,
7 then.

8 So Cdr. Sullivan, we -- at the public hearing in
9 March, Mr. Arellanes, we heard from Mr. Arellanes and, in
10 the meantime, he has sent a letter to the Court. Did
11 everybody get a copy of that letter?

12 MALE SPEAKER: No, sir.

13 MS. MARTINEZ: We did not, Your Honor.

14 THE COURT: Well, Dionna, let's see that
15 everybody gets it --

16 LAW CLERK: I will, Judge.

17 THE COURT: -- gets a copy of that, please.

18 So he had concerns not only about the use of
19 force and use of Tasers, but -- and this is kind of an
20 amalgam of the other issue, but he also had some concerns
21 about ongoing harassment. And I asked Deputy Chief Garcia
22 to look into that.

23 Can you address those for me, Cdr. Sullivan?

24 CDR. SULLIVAN: Again, Your Honor, Cdr. Sullivan
25 here. I can address, certainly, the training aspect of it.

1 I was in court when you heard from Mr. Arellanes, so I was
2 aware of the issue. And on March 28th, we actually had a
3 meeting with Mr. Arellanes and his attorneys. I brought in
4 the training regimen that we do deliver to both the cadets
5 and the officers ongoing. I showed them all of the -- all
6 of the paperwork and the documentation that shows that the
7 Albuquerque Police Department and the Albuquerque Police
8 Academy are training in accordance with the Taser manual.
9 And we are specifically following their exact
10 recommendations.

11 Unfortunately, I think that Mr. Arellanes got
12 some bad information from one particular officer. And it's
13 my responsibility, as the academy director, to determine if
14 that's an individual issue or a systematic issue. I assured
15 him and his attorneys that we would be doing that.

16 As you know, Your Honor, we're going to be
17 conducting an entire use-of-force retraining in 2018 of the
18 entire Department. So it's certainly something that will be
19 addressed, but I did want to make sure that he and his
20 counsel are well aware that this is not something the police
21 department trains. We are certainly well aware of where the
22 Taser target zones are and what the Taser manual represents.
23 And this is absolutely something that we do train and it's
24 what the officers are taught.

25 THE COURT: Commander, thank you for taking the

1 time to meet with Mr. Arellanes and his representative and
2 address his concerns about Taser training and deployment.

3 Just because we're talking about Mr. Arellanes,
4 is Deputy Chief Garcia with us this morning?

5 MR. SCHMEHL: Your Honor, this is Assistant City
6 Attorney Jeramy Schmehl. He is not, Your Honor. He is
7 traveling with some training required by the Department.

8 THE COURT: When we -- would you -- when you talk
9 to him, please -- I had directed him at the public hearing
10 to address Mr. Arellanes' concern about the harassment issue
11 and to keep me updated on a monthly basis. I -- I don't
12 remember what date that was, but I expect that a report
13 ought to be due pretty soon. So I'll look forward to that.

14 Back to the agenda.

15 MR. SCHMEHL: Yes, Your Honor. If I could just
16 real briefly -- if it please the Court. There was a
17 referral made and the next agenda item will speak to the
18 efforts by Deputy Chief Garcia to address and report back to
19 the Court on the allegations.

20 There was a referral for an investigation to be
21 initiated by Mr. Harness into the complaint, and I think he
22 would be speaking to that directly.

23 THE COURT: I'm sorry. I hadn't looked down at
24 the next item, so obviously, let's go to that.

25 Mr. Harness?

1 MR. HARNESS: Yes. Good afternoon again, Your
2 Honor. We did receive -- I was in the court when
3 Mr. Arellanes made his allegations against the Department,
4 and I spoke with him briefly after the hearing. And then in
5 consultation with Deputy Chief Garcia and Cdr. Miller from
6 Internal Affairs, they did draft a complaint on behalf of
7 Mr. Arellanes. And they forwarded it to our agency in
8 accordance with APD policy and the Albuquerque City
9 ordinance or oversight, because this is a complaint that is
10 originating from a civilian.

11 So we have taken the issue and we have assigned
12 it to an investigator. The investigator has been out to
13 interview people in Mr. Arellanes' neighborhood. He is
14 attempting to solicit surveillance videos from the area,
15 attempting to identify APD personnel that may be involved.
16 He's gotten reports on incidents within that particular beat
17 area, CADS reports, and he is in the midst of his
18 investigation. He has interviewed some neighbors and has
19 not yet interviewed Mr. Arellanes, but that will be a part
20 of the investigation, obviously, as well.

21 THE COURT: Well, Mr. Harness, thank you for the
22 update, and forgive me for not seeing that next item as it
23 related to Mr. Arellanes. You-all are addressing the
24 concern in a responsible way, and I look forward to the
25 result of that investigation. Thank you.

1 MR. HARNESS: You're welcome.

2 THE COURT: So Item 10 is just upcoming events
3 and a request for a public status conference in June.

4 The request was for the week of June 11th
5 through the 16th, and my schedule won't allow for that and
6 I'm wondering if we could -- and this will seem inconsistent
7 with my earlier initiative to press forward on at every
8 point, but I -- I'd like to have that public conference --
9 I'll come to Albuquerque again, but I'd like to do that on
10 perhaps July 18th. What does that look like for
11 everyone's schedule?

12 MR. MOWRER: I'm sorry, Your Honor. July what?

13 THE COURT: Eighteenth.

14 MR. MOWRER: Thank you.

15 THE COURT: Wednesday the 18th.

16 DR. GINGER: Your Honor, I have a conflict. I'll
17 see if I can change that and advise the Court by tomorrow.

18 MR. MOWRER: This is Fred Mowrer on behalf of the
19 APOA. July 18th works for me, Your Honor.

20 THE COURT: Thank you.

21 MS. MARTINEZ: The United States is available.

22 THE COURT: Thank you.

23 JUDGE GARCIA: Judge Brack, this is Lorenzo
24 Garcia. I am available on the 18th as well.

25 MR. SCHMEHL: As is the City, Your Honor.

1 THE COURT: Good. Thank you.

2 Dr. Ginger, let us know if that conflict can be
3 revolved. If not, we'll look at another date. That just
4 would work best for my schedule, but I'm glad to accommodate
5 everyone else's, if need be.

6 So other than that, June 1st the City and
7 independent monitor file a status report. June 4th
8 through the 8th, community meetings to discuss the status
9 report, the status of the reform effort. June 11 through
10 16, the monitoring team is going to be doing a site visit.
11 And what else did we -- is on the agenda this morning,
12 folks? Anything?

13 MS. MARTINEZ: Your Honor?

14 THE COURT: Yes, ma'am.

15 MS. MARTINEZ: If the Court is not able to do a
16 status conference the week of the site visit, would the
17 Court have its regular status conference the first week of
18 June and then have the July status conference on
19 July 18th?

20 THE COURT: Yes, ma'am, I think that would be a
21 good way to accommodate the change I need to make. If it
22 works for everyone else.

23 MS. MARTINEZ: Thank you so much.

24 THE COURT: Yes, ma'am.

25 Anything else I can help you folks with today?

1 MR. MOWRER: Not from the APOA, Your Honor.

2 Thank you.

3 DR. GINGER: Not from the monitor, Your Honor.

4 THE COURT: Well, thank you-all very much. I
5 appreciate everyone's efforts. I really do. And look
6 forward to hearing from you, Dr. Ginger, about the change to
7 July 18th and, otherwise, we'll be back together
8 May 17th at 10:30 in the morning.

9 Thanks very much. Y'all have a great day.

10 (The proceedings concluded at 12:24 P.M.)

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UNITED STATES OF AMERICA
DISTRICT OF NEW MEXICO

CERTIFICATE OF OFFICIAL REPORTER

I, Vanessa I. Alyce, RPR, NM CCR, and Federal Official Court Reporter in and for the United States District Court for the District of New Mexico, do hereby certify that pursuant to Section 753, Title 28, United States Code, that I did report in stenographic shorthand to the best of my skill and ability the foregoing pages 1-44 of the proceedings set forth herein, that the foregoing is a true and correct transcript of the stenographically recorded proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 17th day of April 2018.

S/Electronically Filed
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